



## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0099]

#### Hours of Service of Drivers: Application for Exemption; Leland Schmitt, Jr.

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), (DOT).

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that Leland Schmitt, Jr. requests an exemption from five provisions of the federal hours of service (HOS) regulations. The applicant requests the exemption for himself for a 5-year period and believes that his safe driving record and experience demonstrate an equivalent level of safety. FMCSA requests public comment on the applicant's request for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number (FDMS) FMCSA-2022-0099 by any of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). See the **Public Participation and Request for Comments** section below for further information.
- **Mail:** Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA-2022-0099). Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the **Privacy Act** heading below.

**Docket:** For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590-0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

**Privacy Act:** In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice DOT/ALL-14 FDMS, which can be reviewed at <https://www.transportation.gov/privacy>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202-366-2722 or [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Operations, telephone (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

##### **Submitting Comments**

If you submit a comment, please include the docket number for this notice (FMCSA-2022-0099), indicate the specific section of this document to which the

comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number (“FMCSA-2022-0099”) in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register*

(49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Applicant's Request**

Leland Schmitt, Jr. requests a five-year exemption from 49 CFR 395.3(a)(1) (the 10 consecutive hour off duty time requirement), section 395.3(a)(2) (the 14 hour “driving window”), section 395.3(a)(3)(ii) (the 30-minute break requirement), and sections 395.3(b)(1) and (2) (respectively, the 60 hours-in-7-days and the 70 hours-in 8-days limits). The applicant is an owner-operator currently leased to D & E Transport in Clearwater, Minnesota, who has been operating commercial motor vehicles (CMVs) for 30 years, and the requested exemption is solely for the applicant. The applicant states that the mandatory 10 hour off-duty break goes against his natural sleep patterns, as his normal nighttime sleep while in the CMV is between 5 to 7 hours.

A copy of Mr. Schmitt's application for exemption is included in the docket for this notice.

### **IV. Request for Comments**

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Leland Schmitt, Jr.'s application for an exemption from various provisions in the Federal HOS regulations in 49 CFR part 395. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file, in the

public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

**Larry W. Minor,**  
*Associate Administrator for Policy.*

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